

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 13, 2009

- D053890 Kim et al. v. Lee**
The trial court's August 21, 2008 order denying Lee's motion for attorney fees is affirmed. Lee is to bear costs on appeal.
Aaron, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.
- D055246 S.B. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorneys for petitioners S.B. and D.P. have notified the court that petitions for writs of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D047347 Schatz v. Allen Matkins Leck Gamble & Mallory LLP**
The order is reversed and the matter is remanded to the trial court for further proceedings in accordance with the Supreme Court's decision in Schatz I. Allen Matkins is entitled to costs on appeal.
McConnell, P.J.; We Concur: Huffman, J., Aaron, J.
- D052270 Golden v. Lasher**
The orders are affirmed as modified to reflect that the reconsidered support award is \$204 per month, and the trial court is directed to prepare modified orders accordingly. Each party shall bear its own costs on appeal.
Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.
- D052629 Avila et al. v. City of Oceanside et al.**
The judgment is affirmed. Respondents are awarded costs on appeal.
McConnell, P.J.; We Concur: Benke, J., McIntyre, J.
- D054801 In re Capps on Habeas Corpus**
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Joan Irion
Clerk: D. Moore

- D054163 PeoplePC, Inc. v. State Board of Equalization**
Cause called on merits. Martin I. Eisenstein, Esq. argued for appellant. Leslie Branman Smith, Deputy Attorney General, argued for respondent. Mr. Eisenstein replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 13, 2009 (Continued)

D053818 Kutina v. Jauregui

Cause called on merits. Branden L. Timboe, Esq. argued for respondent.
William Calderon Jauregui argued for appellant in pro per. Cause submitted.

D052147 People v. Blount

Cause called on merits. Charles R. Khoury, Esq. argued for appellant.
Marvin Mizelle, Deputy Attorney General, argued for respondent.
Mr. Khoury replied. Cause submitted.

Court recessed at 10:09 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Joan Irion
Clerk: D. Moore

D052138 People v. Green

Cause called on merits. Russell S. Babcock, Esq. argued for appellant.
Kevin Kim, Certified Law Student, argued for respondent. Mr. Babcock replied.
Cause submitted.

Court recessed at 1:48 p.m. to change panel members. New panel members:
The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Richard Huffman and James McIntyre

D053802 People v. Lord

Cause called on merits. Russell S. Babcock, Esq. argued for appellant.
Ellen McLynn, Certified Law Student, argued for respondent. Mr. Babcock replied.
Cause submitted.

D053241 People v. Washington

Cause called on merits. Ava R. Stralla, Esq. argued for appellant.
Douglas Tan, Certified Law Student, argued for respondent.
Ms. Stralla replied. Cause submitted.

D053705 Velez v. Peter et al.

Cause called on merits. William Seegmiller, Esq. argued for appellant.
Marla A. Grover, Esq. argued for respondent. Mr. Seegmiller replied.
Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 13, 2009 (Continued)

D054087 Farahani v. San Diego Community College District et al.
Cause called on merits. Ray J. Artiano, Esq. argued for appellant.
Kenneth Baisch, Esq. argued for respondent. Mr. Artiano replied.
Cause submitted.

D054336 Powers et al. v. Pottery Barn, Inc.
Cause called on merits. James Richard Patterson, Esq. argued for appellant.
Phillip Craig Cardon, Esq. argued for respondent. Mr. Patterson replied.
Cause submitted.

Court recessed at 3:39 p.m. until Tuesday, July 14, 2009 at 9:00 a.m.

D051909 People v. Garcia
The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 14, 2009

- D055443 National Credit Center, Inc. v. Superior Court of the County of San Diego/Drimmel**
The petition for writ of mandate and request for stay have been read and considered by Justices Huffman, McIntyre and Irion. The petitioner has an adequate remedy by way of appeal. The petition is denied.
- D053836 People v. Marker**
The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.
- D052147 People v. Blount**
Affirmed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.
- D053080 People v. Fields**
The judgment of the trial court is affirmed.
Aaron, J.; We Concur: Nares, Acting P.J., Haller, J.
- D055475 Thurman v. Superior Court of San Diego County/Bayshore Transit**
The petition is denied.
- D054038 People v. Truehitt**
Upon written request filed by the appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)
- D055385 Gough v. Schwarzenegger, as Governor, etc.**
Request for permission to appeal received by this court on July 13, 2009, is denied. (Code of Civ. Proc. § 391.7, subd. (b).) The appeal filed with the Superior Court on June 22, 2009, is dismissed.
- D055026 In re Lomeli on Habeas Corpus**
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
 The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

- D052391 Parker v. Kalish**
Cause called on merits. Shaun Patrick Martin, Esq. argued for appellant. Larry A. Dunlap, Esq. argued for respondent. Mr. Martin replied.
Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 14, 2009 (Continued)

Court recessed at 9:14 a.m. to change panel members. New panel members:
The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices Judith Haller and Terry O'Rourke

D054953 People v. Gomez

Cause called on merits. Susan K. Keiser, Esq. argued for appellant.
Donald William Ostertag, Deputy Attorney General, argued for respondent.
Ms. Keiser replied. Cause submitted.

Court recessed at 9:35 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Gilbert Nares and James McIntyre

D054743 People v. Hochanadel et al.

Cause called on merits. Jacqueline Camille Jackson, Deputy District Attorney,
argued for appellant. Marylou Hillberg, Esq. argued for respondent,
Hochanadel. James Michael Crawford, Esq. argued for respondent, Bednar.
Stephen Merritt Hinkle, Esq. argued for respondent, Campbell. Ms. Jackson
replied. Cause submitted.

Court recessed at 2:01 p.m. to change panel members. New panel members:
The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Joan Irion

D053804 People v. Yalda

Cause called on merits. John J. Lanahan, Esq. argued for appellant.
Jennifer Jadovitz, Deputy Attorney General, was present in oral argument for
respondent and submitted on the briefs. Cause submitted.

D053808 People v. Bleich

Cause called on merits. Keith H. Rutsman, Esq. argued for appellant.
Jennifer Bluver, Certified Law Student, argued for respondent.
Mr. Rutman replied. Cause submitted.

D052964 People v. Marshall

Cause called on merits. Charles R. Khoury, Esq. argued for appellant.
Teresa Torreblanca, Deputy Attorney General, argued for respondent.
Mr. Khoury replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 14, 2009 (Continued)

D053488 Sonnenshein et al. v. Windansea Beach Homes et al.

Cause called on merits. John Joseph McNutt, Esq. argued for appellant, McPherson and Krambs. Craig A. Roeb, Esq. argued for appellant, Windansea Beach Homes. Jae K. Park, Esq. argued for respondent. Mr. McNutt replied. Cause submitted.

Court recessed at 3:02 p.m. until Wednesday, July 15, 2009 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 15, 2009

- D055132 In re Conservatorship of Chaney-Jones**
The appeal is dismissed on the ground it is from a nonappealable order that can be reviewed only by writ of mandate.
- D053191 People v. Garcia**
The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Aaron, J.
- D052072 In re Marriage of Rios**
Orders affirmed. Linda to recover her costs of appeal.
Benke, Acting P.J.; We Concur: Huffman, J., O'Rourke, J.
- D054914 Victor L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The petition is denied. The request for stay is denied.
McIntyre, Acting P.J.; O'Rourke, J., Irion, J.
- D054524 In re Hope S., a Juvenile**
Judgment affirmed. Irion, J.; We Concur: Benke, Acting P.J., McIntyre, J.
- D052637 Howard v. Monterey Insurance Company**
The order is affirmed. Sanctions in the amount of \$750 payable to the clerk of this court are imposed against Orloff for misrepresenting the appellate record. Howard is entitled to costs on appeal.
McConnell, P.J.; We Concur: Nares, J., McIntyre, J.
- D055324 Ethicon, Inc. v. Superior Court of San Diego County/McCarthy et al.**
The petition for writ of mandate has been read and considered by Justices Huffman, Aaron and Irion. While the court has doubts about the trial court's application of *res ipsa loquitur* and *Summers v. Tice* (1948) 33 Cal.2d 80, 87, to this case, petitioner has an adequate remedy by way of trial and appeal. The petition is denied.
- D055114 In re Cobb on Habeas Corpus**
The petition is denied.
- D054455 In re M.P., a Juvenile**
The judgment is affirmed.
McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 15, 2009 (Continued)

- D053391 Messenger Courier Association of the Americas et al. v. California Unemployment Insurance Appeals Board**
The judgment of the superior court upholding the validity of *NCM Direct Delivery v. Employment Development Department*, Precedent Tax Decision No. P-T-495 (2007) is affirmed. The request for judicial notice is denied. Respondent Board shall recover its costs on appeal. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.
- D053492 Sasco Electric v. California Fair Employment and Housing Commission**
The judgment is affirmed. The Commission is awarded its costs on appeal. McConnell, P.J.; We Concur: Nares, J., McIntyre, J.
- D054065 In re James R., Jr., a juvenile**
The judgments are reversed. McDonald, Acting P.J.; We Concur: McIntyre, J., Irion, J.
- D054216 In re Lisa P., a Juvenile**
The orders are affirmed. McIntyre, J.; We Concur: Nares, Acting P.J., Irion, J.
- D055363 Candelore v. Hurtado**
The court has received Mary Hellmer's letter dated July 8, 2009, written on behalf of appellant Sarah Hurtado. The matter having been considered by Presiding Justice McConnell and Associate Justices Huffman and Irion, the appeal is dismissed on the ground it is not taken from an appealable order or judgment. The dismissal is without prejudice to the right to appeal a default judgment if one is entered.
- D054902 In re Hernandez on Habeas Corpus**
The petition is denied.
- D054477 In re Ricchio on Habeas Corpus**
The denial of a petition for a writ within the appellate court's original jurisdiction without issuance of an alternative writ or order to show cause is final immediately. (Cal. Rules of Court, rule 8.387(b)(2)(A).) The petition for writ of habeas corpus was summarily denied on June 17, 2009. The petition for rehearing dated June 30, 2009, is therefore denied because the court is without jurisdiction to rehear the matter. The clerk is directed to retain one copy of the petition for rehearing for our records and return the original and all other copies to petitioner.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 15, 2009 (Continued)

Court convened at 9:00 a.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D052252 People v. Hampton
Cause called on merits. Wilson Adam Schooley, Esq. argued for appellant.
Elizabeth Hartwig, Deputy Attorney General, argued for respondent.
Mr. Schooley replied. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members:
The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D054625 People v. Duran
Cause called on merits. Howard C. Cohen, Esq. argued for appellant.
Anika Padhiar, Deputy Attorney General, argued for respondent.
Mr. Cohen replied. Cause submitted.

Court recessed at 9:40 a.m. to change panels. New panel members:
The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Cynthia Aaron

D052068 Bino v. Kaiser Foundation Hospitals
Cause called on merits. Andrew Gerard Crotty, Esq. argued for appellant.
Frederick Scott Page, Esq. argued for respondent. Mr. Crotty replied.
Cause submitted.

Court recessed at 10:11 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D053134 Coffman Specialties, Inc. v. Department of Transportation
Cause called on merits. Kerri M. Melucci, Esq. argued for appellant.
Ross C. Moody, Deputy Attorney General, argued for respondent.
Ms. Melucci replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 15, 2009 (Continued)

D054062 Citizens for Responsible Environmental Development v. City of San Diego

Cause called on merits. Cory Jay Briggs, Esq. argued for appellant.
Jennifer K. Gilman, Deputy City Attorney, argued for respondent.
Cause submitted.

D053535 B. Young Enterprises, Inc. v. One Carol Place Company

D054320 B. Young Enterprises, Inc. v. One Carol Place Company

Cause called on merits. Vito Anthony Costanzo, Esq. argued for respondent.
Steven Christophe Levistik, Esq. argued for appellant. Cause submitted.

Court recessed at 2:30 p.m. until Thursday, July 16, 2009 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 16, 2009

D052753 People v. Reyes

It is ordered that the opinion filed June 18, 2009, is modified. There is no change in judgment. The petition for rehearing is denied.

D052138 People v. Green

Affirmed in part, reversed in part and remanded with instructions.
Irion, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D053556 Abdou v. County of San Diego et al.

The petition for rehearing is denied.

D055469 People v. Rivera

The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refile a notice of appeal after an appealable order or judgment has been entered.

D055301 In re Ramirez on Habeas Corpus

The petition is denied.

D054070 In re P.A. et al., Juveniles

The findings and orders are affirmed. If the court has not already done so, the court shall issue a nunc pro tunc order prohibiting Father from having any contact with KR. Haller, J.; We Concur: Nares, Acting P.J., Aaron, J.

D055299 In re Bryant on Habeas Corpus

The petition is denied.

D055295 Guadarrama v. Superior Court of San Diego County/People

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and
 The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D052764 Ray v. Maiorano

Cause called on merits. Judy Ray, argued for appellant in pro per.
Alan Yockelson, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 16, 2009 (Continued)

Court recessed at 9:09 a.m. to change panel members. New panel members:
The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D054511 In re Justino A. on Habeas Corpus

Cause called on merits. Kathleen Frey, Deputy Attorney General, argued for appellant. Richard Pfeiffer, Esq. argued for respondent. Ms. Frey replied. Cause submitted.

Court recessed at 9:26 a.m. to change panel members. New panel members:
The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D053015 People v. Ramirez

Cause called on merits. John L. Staley, Esq. argued for appellant. Michael Semanchik, Certified Law Student, argued for respondent. Mr. Staley replied. Cause submitted.

D052787 Weisblat et al. v. City of San Diego

Cause called on merits. Edward Matthew Teyssier, Esq. argued for appellant. Joe Cordileone, Deputy City Attorney, argued for respondent. Mr. Teyssier replied. Cause submitted.

Court recessed at 10:34 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
 The Honorable Associate Justices James McIntyre and Joan Irion
Clerk: D. Moore

D053434 In re Darryl S. on Habeas Corpus

Matter called on merits. Richard Pfeiffer, Esq. argued for appellant. Lora Fox-Martin, Deputy Attorney General, argued for respondent. Mr. Pfeiffer replied. Matter submitted.

D050764 People v. Ontiveros et al.

Cause called on merits. Dacia Burz, Esq. argued for appellant, Johnson. Stacy Tyler, Deputy Attorney General, argued for respondent. Ms. Burz replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 16, 2009 (Continued)

Court recessed at 2:05 p.m. until Friday, July 17, 2009 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 17, 2009

D052883 People v. Cruz
The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Irion, J.

**D054712 Jose B. v. The Superior Court of San Diego County/San Diego County Health
and Human Services**
The petition is denied. The request for a stay is denied.
Haller, Acting P.J.; We Concur: McDonald, J., Irion, J.

D052903 Costa Serena Owners Coalition v. Costa Serna Architectural Committee
D053159 Costa Serena Owners Coalition v. Costa Serna Architectural Committee/Diaz
D053553 Costa Serena Owners Coalition v. Costa Serna Architectural Committee
The opinion filed June 24, 2009 is ordered certified for publication. The attorneys
of record are:

Shifflet, Kane & Knoske and Gregory C. Kane for Plaintiff and
Respondent and Plaintiff and Appellant Costa Serena Owners Coalition.
Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Matthew B. Stucky,
Esther P. Holm and Lisa Ricksecker for Defendant and Appellant and Defendant
and Respondent Costa Serena Architectural Committee. K. Martin White for
Movant and Appellant Jess Diaz.

NOTE: The case title in the original opinion was edited and is reflected in this
order pursuant to title practices described in the California Style Manual.

D055312 In re Baker on Habeas Corpus
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and
 The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D052554 People v. Paris
D054536 In re Paris on Habeas Corpus
Cause called on merits. Ward Clay, Esq. argued for appellant. Eric Swenson,
Deputy Attorney General, argued for respondent. Mr. Clay replied.
Cause submitted as to appeal only, D052554.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 17, 2009 (Continued)

Court recessed at 9:36 a.m. to change panel members. New panel members:
The Honorable Judith Haller, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D053498 B v. J
Cause called on merits. Michael Braden Wright, Esq. argued for appellant.
Cause submitted.

D053813 Muhoberac et al. v. Boyle
Cause called on merits. Jacqueline A. Oliver, Esq. argued for appellant.
John Morris, Esq. argued for respondent. Ms. Oliver replied. Cause submitted.

Court recessed at 10:11 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
 The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. Moore

D054207 The Retirement Group v. Galante et al.
Cause called on merits. David Herman Schwartz, Esq. argued for appellant.
Scott L. Metzger, Esq. argued for respondent. Mr. Schwartz replied.
Cause submitted.

D054995 Tuszynska v. Hearn
Cause called on merits. Gregory Marsey, Esq. argued for respondent.
Letitia Esisabeth Pepper, Esq. argued for appellant. Cause submitted.

**D053194 Williamsburg National Insurance Company v. Progressive
 Casualty Insurance Company**
Cause called on merits. Patrick M. Howe, Esq. argued for appellant.
Joyce Helock Furzer, Esq. argued for respondent. Mr. Howe replied.
Cause submitted.

D053695 Cohen et al. v. Villa La Jolla Townhouses Community Association
Cause called on merits. Nathan Cohen argued for appellant in pro per.
Lauri Croce, Esq. argued for respondent. Mr. Cohen replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
July 17, 2009 (Continued)

Court adjourned at 2:48 p.m.

D055117 In re Daily on Habeas Corpus
The petition is denied.

D055040 In re Allen on Habeas Corpus
The petition is denied.

D054880 In re Harbour on Habeas Corpus
The petition is denied.